AFTAB PUREVAL
HAMILTON COUNTY CLERK OF COURTS

COMMON PLEAS DIVISION

ELECTRONICALLY FILED
March 4, 2019 10:27 AM
AFTAB PUREVAL
Clerk of Courts
Hamilton County, Ohio
CONFIRMATION 823504

DAWSON LEE **A 1901120**

vs.
KEVIN KROGER

FILING TYPE: INITIAL FILING (IN COUNTY) WITH JURY DEMAND

PAGES FILED: 9

EFR200

IN THE SUPERIOR COURT OF HAMILTON COUNTY
STATE OF OHIO

DAWSON LEE,	)
DIONDRE LEE, and	)
ANTIONETTE LEE	)
	)
Plaintiffs,	)
	)
v.	)
	)
OFFICER KEVIN KROGER	)
	)
and	)
	)
CINCINNATI POLICE DEPARTMENT	)
	)
and	)
	)
CITY OF CINCINNATI	)
Defendants.	)
	)

COMPLAINT

COMES NOW, Plaintiffs Dawson Lee (hereinafter "Plaintiff Dawson"), Diondre Lee, and Antionette Lee, file this Complaint stating as follows:

PRELIMINARY STATEMENT

1. Plaintiffs bring this action seeking redress, among other things herein, for injuries caused by Defendant Kroger's unreasonable and excessive use of force when he unlawfully tased Plaintiff Dawson, breaking his collar bone, and placing him in severe mental and emotional distress that is ongoing.

PARTIES

2. Plaintiffs Dawson Lee, Diondre Lee and Antionette Lee are all residents of Ohio and reside within the same household.

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3. Defendants, Officer Kevin Kroger, the Cincinnati Police Department and the City of Cincinnati are all domiciled in the state of Ohio and can each be served at their respective business addresses which are hereby attached.

JURISDICTION AND VENUE

4. The Court has jurisdiction as this Court has unlimited jurisdiction over all legal and equitable matters.

5. Venue is proper as Defendant, whether individually or through their registered agents, live in and/or work and operate in Hamilton County, State of Ohio.

FACTUAL SUMMARY

6. On or about March 2, 2017 Defendant Kroger attempted to apprehend Plaintiff Dawson.

7. At such attempted apprehension, Plaintiff Dawson fled from Defendant Kroger who then gave chase.

8. Defendant Kroger did not give Plaintiff Dawson an order to stop.

9. During the chase, Defendant Kroger drew and discharged his taser at Plaintiff Dawson.

10. Defendant Kroger's taser struck Plaintiff Dawson in the back as he fled.

11. At Defendant Kroger's first discharge of his taser, Plaintiff Dawson fell on the hard pavement on which he ran and broke his collar bone.

12. While Plaintiff Dawson was on the ground and writhing in pain, Defendant Kroger discharged his taser into Plaintiff Dawson again, a second time.

13. Several other police officers further subdued Plaintiff Dawson and then placed him into handcuffs, keeping him on the ground for several more minutes.

14. While still on the ground, Plaintiff Lee was searched, and no weapons were found upon him or near him.

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15. While still on the ground and in handcuffs, Defendant Kroger threatened to tase Plaintiff Lee with two additional tasings.

16. As a direct result of Defendant Kroger's unreasonable and excessive use of force upon Plaintiff Dawson, his subsequent collar bone break because of such force, and Plaintiff Dawson's ongoing mental and emotional distress from said unreasonable and excessive force by said multiple tasings, Plaintiffs have incurred damages including, but not limited to the sum of Two Million Dollars ($2,000,000.00).

COUNT I

DEFENDANT KROGER'S VIOLATED THE FACTORS SET OUT IN DEFENDANT CINCINNATI POLICE DEPARTMENT'S USE OF FORCE POLICY AS ARTICULATED BY GRAHAM V. CONNER, 490 U.S. 396 (1989)

17. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1- 16 of this complaint with the same force and effect as if fully set forth herein.

18. Defendant Kroger is a police officer employed by the Defendant Cincinnati Police Department.

19. Defendant Kroger was on duty and in full uniform when he apprehended Plaintiff Dawson.

20. Defendant City of Cincinnati represents Defendant Cincinnati Police Department and its police officers in civil litigation of this kind.

21. Defendant Kroger failed multiple or all of the Graham factors in Defendant Cincinnati Police Department's use of force policy.

22. As a direct and proximate result of Defendant's unreasonable and excessive force against Plaintiff Dawson, Plaintiffs allege that Defendant Kroger violated Defendant Cincinnati

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Police Department use of force policy and that articulated by the United States Supreme Court.

COUNT II

DEFENDANT KROGER USED AN UNREASONABLE AND EXCESSIVE AMOUNT OF FORCE AGAINST PLAINTIFF DAWSON

23. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1-22 of this complaint with the same force and effect as if fully set forth herein.

24. Plaintiff Dawson was a fourteen year old boy when he was unlawfully tased by Defendant Kroger in 2017.

25. Plaintiff Dawson weighed one-hundred twenty (120) pounds and was five feet, five inches (5'5") tall when he was unlawfully tased by Defendant Kroger in 2017.

26. Plaintiff Dawson was unarmed, non-threatening and at no time actually or impliedly threatened Defendant Kroger or any other person in any part of his interaction with Defendant Kroger, or before his interaction with Defendant Kroger.

27. Defendant Kroger fired his taser at Plaintiff Dawson's back as he fled.

28. Defendant Kroger, at no point, gave Plaintiff Dawson an instruction to stop before firing his taser, subsequently hitting Plaintiff Dawson in his back.

29. Once tased, Plaintiff Dawson fell to the ground and landed on hard pavement thereby breaking his collar bone.

30. While on the ground injured and immobile, Defendant Kroger tased Plaintiff Dawson a second time without reasonable provocation or threat of harm from Plaintiff Dawson.

COUNT III

DEFENDANT KROGER'S QUALIFIED IMMUNITY DOES NOT APPLY IN THIS INSTANCE

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31. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1- 30 of this complaint with the same force and effect as if fully set forth herein.

32. Defendant Kroger is entitled to qualified immunity so long as his conduct was not unreasonable and the victim, Plaintiff Dawson, does not suffer serious injury or death.

33. Defendant Kroger's use of force was unreasonable and excessive because Plaintiff Dawson was a child, and substantially shorter (5'5") and smaller (120 lbs.) than Defendant Kroger.

34. Defendant Kroger's use of force was unreasonable and excessive because Plaintiff Dawson never directly or indirectly threatened Defendant Kroger or anyone else.

35. Defendant Kroger's use of force was unreasonable and excessive because Plaintiff Dawson fled in fear of Defendant Kroger, showing his back to Defendant Kroger and at no time giving him a reason to be afraid of Plaintiff Dawson or for others to be in fear of him.

36. Defendant Kroger's use of force was unreasonable and excessive because he tased Plaintiff Dawson as he fled, striking him in his back and without giving him a command to stop.

37. Defendant Kroger's use of force was unreasonable and excessive because he tased Plaintiff Dawson a second time while he was on the ground, his collar bone broken and writhing in pain.

38. Defendant Kroger's use of force was unreasonable and excessive because tasing Plaintiff Dawson twice created a high potential risk of secondary injury, i.e., Plaintiff Dawson's collar bone break, due to the precarious environmental conditions, hence Plaintiff's broken collar bone as a direct and proximate result of Defendant Kroger tasing him from behind and Plaintiff falling onto hard pavement.

39. As a direct and proximate result of Defendant Kroger's unreasonable and excessive use of force, Plaintiffs have been damaged in an amount to be determined at trial, but not less than Two Million Dollars, ($2,000,000.00).

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40. By reason of the facts and circumstances stated above, Plaintiffs deem Defendant Kroger's behavior to have been unreasonable and excessive.

COUNT IV

DEFENDANT KROGER'S EXCESSIVE USE OF FORCE VIOLATED PLAINTIFF DAWSON'S CIVIL RIGHTS UNDER 42 USC § 1983

41. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1- 40 of this complaint with the same force and effect as if fully set forth herein.

42. 42 USC § 1983 provides for civil action for deprivation of rights.

43. Defendant Kroger violated Plaintiff Dawson's rights by his use of unreasonable and excessive force against him.

44. By use of his unreasonable and excessive force, Defendant Kroger severely injured Plaintiff physically by breaking his collar bone, thereby also causing him great mental and emotional anguish that is ongoing.

COUNT V

PLAINTIFF'S BROKEN COLLAR BONE

45. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1- 44 of this complaint with the same force and effect as if fully set forth herein.

46. Defendant Kroger tased Plaintiff Dawson twice.

47. Defendant Kroger's tasing of Plaintiff was unreasonable and excessive.

48. Plaintiff continues to suffer physically, emotionally and mentally as a result of his formerly broken collar bone.

49. As a direct and proximate result of Defendant Kroger's unreasonable and excessive use of force, Plaintiff's collar bone was broken.

COUNT VI

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PLAINTIFF DAWSON NO LONGER PLAYS SPORTS

50. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1- 49 of this complaint with the same force and effect as if fully set forth herein.

51. Before Plaintiff Dawson was the victim of Defendant Kroger's unreasonable and excessive force, he was an avid sportsman.

52. Plaintiff Dawson played football, basketball and baseball.

53. Plaintiff Dawson no longer plays sports of any type because a) he continues to experience residual pain from his previously broken collar bone, b) he lacks the confidence to play sports due to his injury, and c) he experiences high anxiety related to his lesser performance due to his collar bone injury.

COUNT VII

EMOTIONAL DISTRESS

54. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1- 53 of this complaint with the same force and effect as if fully set forth herein.

55. As a direct and proximate result of Defendant Kroger's use of unreasonable and excessive force, Plaintiff Dawson verifiably suffers from post-traumatic stress syndrome (PTSD).

56. As a direct and proximate result of Defendant Kroger's use of unreasonable and excessive force, Plaintiff Dawson verifiably suffers high anxiety in association with adult authority figures.

57. As a direct and proximate result of Defendant Kroger's use of unreasonable and excessive force, Plaintiff Dawson's parents (Plaintiffs Diondre & Antionette) continue to suffer high anxiety for the care of their son, for his recovery and for the ongoing expenses associated with Plaintiff Dawson's physical, emotional and mental healing.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand a jury trial and request the following:

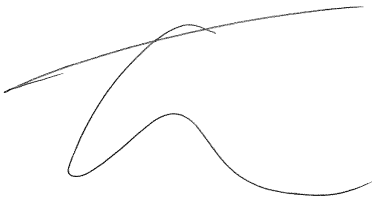
A. Plaintiffs recover from all Defendants a sum in the amount to be determined by the jury, or in any amount that would fairly compensate Plaintiffs for all past and ongoing losses sustained as determined by the Court, but not less than Two Million Dollars ($2,000,000.00);

B. Require Defendants to remedy Plaintiffs' harm especially their various physical and mental maladies; and

C. For such other and further relief as the Court may deem just and proper.

Respectfully submitted,

This 4th day of March 2019



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PARTIES AND ADDRESSES FOR SERVICE

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Cincinnati, Ohio. 45238

Cincinnati Police Department
c/o Police Chief Eliot Isaac
310 Ezzard Charles Drive
Cincinnati, Ohio 45214

City of Cincinnati
c/o Ms. Paula Boggs Muething, City Solicitor
Cincinnati City Solicitor's Office
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Cincinnati, Ohio 45202

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